

1954

April 19

Mr. Donald J. Henderson, Secretary-Treasurer
Board of Accountancy
71 W. Pearl Street
Nashua, New Hampshire

Dear Mr. Henderson:

Your letter of April 13, 1954 to Mr. Wyman has been referred to me for reply. You inquire therein whether the voluntary payment of poll and head tax will establish that an applicant for a certificate is a "resident of the state" under section 3, chapter 320 of the Revised Laws. You are advised that such payment does not, per se, establish residency within the State. In this connection I direct your attention to letters of Mr. Housikias, who was formerly with this office, to Mr. Percy H. Bennett, former chairman of your Board, dated August 21, 1951 and September 20, 1951, where this specific question is answered and a comprehensive review of the law respecting requirements for residency are given.

You further inquire how long a person, moving from outside the State must reside within the State before he may become a legal resident. Actual presence within the State for any definite period of time is not required to establish residency when this question is considered in the abstract. Many statutes require that for specific purposes residency as defined therein requires that a person reside within the State for a definite period. E. g. Laws 1953, c. 40, s. 2; R. L. c. 31, s. 8 as amended by Laws 1945, c. 165, s. 1.

Chapter 320 of the Revised Laws does not define residency as used therein and your Board when determining whether an applicant is a "resident of the state" would be governed by the general principles of the law respecting residency. Residence is not a term which is easily defined with certainty, but is the equivalent of domicile. Our Supreme Court has defined this term in Hart v. Lindsay, 17 N. H. 235 in the following manner:

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Mr. Donald J. Henderson

C O P Y

April 12, 1935

"In a strict legal sense, that is properly the domicile of a person where he has his fixed, permanent home and principal establishment, to which whenever he is absent, he has the intention of returning."

Each determination by your Board will of necessity have to be made upon the facts as presented to it. That is, whether there is sufficient evidence to show that a person has established "his fixed, permanent home and principal establishment" within the State. Payment of poll tax and length of time within the State are evidentiary facts to be considered together with any other evidence produced by the applicant.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

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